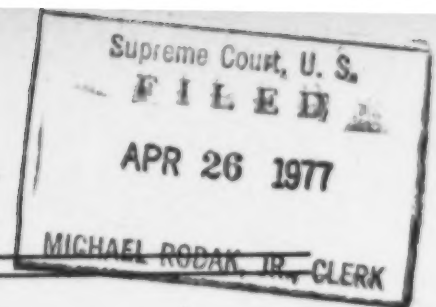


APPENDIX



IN THE
Supreme Court of the United States
OCTOBER TERM, 1976

No. 76-5935

RICKEY LEE DURST, ET AL.,

Petitioners,

—v.—

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 27, 1976
CERTIORARI GRANTED MARCH 21, 1977

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-5935

RICKEY LEE DURST, ET AL.,

Petitioners,

—v.—

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE FOURTH CIRCUIT

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Criminal No. N75-0828

U.S.A.

vs.

RICKEY LEE DURST

DATE

PROCEEDINGS

1975

Nov. 11 Defendant advised of charges against him; rights to counsel and silence. Court appointed counsel (Federal Public Defender).

11/25/75 Indicted by Grand Jury; See Criminal No. 75-0828

12/1/75 Papers transmitted to Clerk.

1975

Nov. 25 (1) Indictment for Violation of U.S.C., Title 18, §§ 1708 and 495. (Possession of Stolen Mail Matter; Uttering U.S. Treasurer's Check)

Nov. 25 (2) Order (Goetz, U.S. Mag.) dated November 11, 1975, appointing Federal Public Defender on behalf of defendant.

Nov. 25 (3) Order (Goetz, U.S. Mag.) dated November 11, 1975, releasing defendant on his personal recognizance, as therein set forth.

Dec. 5 (4) Appearance of Michael S. Frisch, Asst. Federal Public Defender on behalf of defendant.

Dec. 5 —Defendant arraigned and plead "Not Guilty" as to Counts Nos. 1 and 2 before Magistrate Rosenberg.

Dec. 18 (5) Motion of defendant to suppress statement, points and authorities in support thereof and request for hearing. (c/s)

DATE PROCEEDINGS

1976

- Jan. 9 —Pre-trial conference held before Blair, J.
- Jan. 21 (6) Request of United States Attorney for issuance of bench warrant, recommendation as to bail and Order (Blair, J.) as prayed.
- Jan. 21 (7) Bench Warrant issued. (Executed 2/17/76)
- Jan. 26 —Subpoenaes (3) issued on behalf of United States.
- Feb. 17 (8) Order (Rosenberg, U.S. Magistrate) that defendant execute a bond in the amount of \$1,000 and in third party custody of P.T.S.A. with conditions as therein more particularly set forth.
- Feb. 23 (9) Motion of defendant to reduce bond and request for hearing. (c/s)
- Feb. 24 (10) SUPERSEDING INFORMATION FOR VIOLATION OF U.S.C., TITLE 18, SECTION 1701. (OBSTRUCTION OF MAIL)
- Feb. 24 —Defendant Arraigned and Plead Guilty before Mag. Rosenberg.
- Feb. 24 (11) Consent of Defendant to be tried before a U.S. Magistrate
- Feb. 24 —Defendant arraigned and plead "Guilty" before Magistrate Rosenberg.
- March 2 (12) Order U.S. Atty. dismissal indictment herein with leave of Court (Rosenberg, U.S. Mag.) dated February 27, 1976.
- March 2 (13) JUDGMENT: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of six months. Execution of sentence suspended and the defendant placed on probation for a period of three (3) years. The defendant shall pay a fine in the amount of One Hundred Dollars (100.00) Said sentence imposed

DATE PROCEEDINGS

1976

under the Federal Youth Corrections Act, 18 USC 5010(a). The defendant shall pay the said One Hundred Dollar (100.00) fine in installments as directed by probation officer. The defendant shall satisfactorily participate in any academic or vocational program as directed by probation officer. The defendant shall satisfactorily participate in a rehabilitation program and/or treatment program as directed by probation officer to include but not limited to a program relating to drugs. The defendant shall pay restitution in the amount of One Hundred Sixty Dollars (160.00). Order (Rosenberg, U.S. Mag.) dated Feb. 24, 1976

APPEAL FROM MAGISTRATE

- March 2 (14) Appeal from Judgment of the United States Magistrate (Rosenberg), received February 25, 1976
- March 2 —Copies furnished United States Attorney.
- March 2 —Copy of Rule 81 mailed to Counsel for defendant
- March 15 (15) Appellant's Memorandum in Support of Appeal and Request for Hearing, received March 1, 1976. (Two copies submitted)
- Apr. 14 —Status conference held before Northrop, C.J.
- Apr. 26 (16) Brief of Appellee
- May 11 (17) Copy of Supplemental Memorandum of Appellant.
- June 25 (18) Opinion (Northrop, C.J.) (copies delivered to counsel 6/28/76 elg)
- June 28 (19) JUDGMENT: That the Judgment of the United States Magistrate and the sentence thereby imposed in this case is AFFIRMED, Order (Northrop, C.J.) dated June 25, 1976: (copies delivered to counsel 6/28/76 elg)

DATE

PROCEEDINGS

1976

June 29 (20) Notice of Appeal of Defendant. (C/M
6/30/76).

RPT:vvs/75-2286

Nov. 28, 1975

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Criminal No. 75-0828

(18 U.S.C. § 1708, Theft of Mail Matter; 18 U.S.C.
§ 495, Forging and Uttering)

UNITED STATES OF AMERICA

v.

RICKEY LEE DURST

The Grand Jury for the District of Maryland charges:

On or about the 1st day of May, 1975, in the State
and District of Maryland,

RICKEY LEE DURST,

unlawfully had in his possession a United States Treasury
check, number 91,531,915, payable to John Edward
Herche, 3110 East Monument Street, Baltimore, Mary-
land 21205, in the amount of \$319.60, which had been
stolen from the mail, well knowing the said check to have
been stolen.

18 U.S.C. § 1708

COUNT TWO

The Grand Jury for the District of Maryland further
charges:

On or about the 1st day of May, 1975, in the State
and District of Maryland,

RICKEY LEE DURST,

with the intent to defraud the United States, did utter
and publish as true to Antonio Xipolipidis at Stanley's

Bar, East Monument Street, Baltimore, Maryland, a paper writing in the form of a check drawn upon the Treasurer of the United States with a false and forged endorsement "John E. Herche" on the back thereof, the said check being further described as bearing number 91,531,915, payable to John Edward Herche, 3110 East Monument Street, Baltimore, Maryland 21205, in the amount of \$319.60, and RICKEY LEE DURST then knew said endorsement to have been false and forged.

18 U.S.C. § 495

JERVIS S. FINNEY
United States Attorney

A TRUE BILL:

Foreman

RPT:vvs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Criminal No. 75-0828

(Obstruction of Mail, 18 U.S.C. § 1701)

UNITED STATES OF AMERICA

v.

RICKY L. DURST

The United States Attorney for the District of Maryland charges:

On or about the 11th day of April, 1975, in the State and District of Maryland,

RICKY L. DURST

did unlawfully, knowingly and willfully obstruct and retard the passage of the mail, in that he did open a letter addressed to John Edward Herche, 3110 East Monument Street, Baltimore, Maryland 21205, which had been in a post office and authorized depository for mail matter and in the custody of a Postal Service employee before it had been delivered to the person to whom it was directed, with design to obstruct the mail of such addressee.

18 U.S.C. § 1701

JERVIS S. FINNEY
United States Attorney

DEFENDANT

RICKEY L. DURST

DISTRICT OF MARYLAND

Criminal
DOCKET NO.N
75-0828

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this dateMONTH DAY YEAR
February 24, 1976

COUNSEL

☐ WITHOUT COUNSEL for sentencing proceedings
However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL LEPD Michael Erisch
(Name of counsel)

PLEA

☒ GUILTY, and the court being satisfied that there is a factual basis for the plea, ☐ NOLO CONTENDERE, ☐ NOT GUILTY

FINDING &
JUDGMENT

There being a finding/verdict of ☐ NOT GUILTY. Defendant is discharged
☒ GUILTY.

Defendant has been convicted as charged of the offense(s) of obstruction of mail

18 USC 1701

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of six (6) months. Execution of sentence suspended and the defendant placed on probation for a period of three (3) years. The defendant shall pay a fine in the amount of One Hundred Dollars (\$100.00).

Said sentence imposed under the Federal Youth Corrections Act,
18 USC 5010(a).

SPECIAL
CONDITIONS
OF
PROBATION

The defendant shall pay the said One Hundred Dollar (\$100.00) fine in installments as directed by probation officer.
The defendant shall satisfactorily participate in any academic or vocational program as directed by probation officer.
The defendant shall satisfactorily participate in a rehabilitation program and/or treatment program as directed by probation officer, to include but not limited to a program relating to drugs.
The defendant shall pay restitution in the amount of One Hundred Sixty Dollars (\$160.00).

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☐ U.S. District Judge☒ U.S. Magistrate

Paul M. Rosenberg

Date Feb. 24, 1976

Microfilm 21
Date MAR 16 1976

⑬ Filed March 2, 1976

9

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Criminal No. 76-0123

U.S.A.

US.

RONALD HENRY BLYSTONE, JR.

DATE

PROCEEDINGS

1976

Feb. 25 (1) Appeal from Judgment of the United States Magistrate (Rosenberg) dated Feb. 24, 1976.

Feb. 25 (2) Original Papers of United States Magistrate (Rosenberg).

Feb. 25 —Copies furnished United States Attorney.

Feb. 25 —Copy of Rule 81 Mailed to Defendant's counsel.

Mar. 15 (3) Appellant's Memorandum in Support of Appeal and Request for Hearing, received March 1, 1976. (Two copies submitted)

Apr. 14 —Status conference held before Northrop, C. J.

Apr. 28 (4) Brief of Appellee (2 copies submitted)

May 11 (5) Supplemental Memorandum of Appellant. (2 copies submitted)

June 25 (6) Copy of Opinion (Northrop, C.J.) (original filed in Crim. No. N 75-0828)

June 28 (7) JUDGMENT: That the Judgment of the United States Magistrate and the sentence thereby imposed in this case is AFFIRMED, Order (Northrop, C.J.) dated June 25, 1976. (copies delivered to counsel 6/28/76 elg)

June 30 (8) Notice of Appeal of Defendant. (C/M 6/30/76).

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Magistrate's Docket No. 4-75

Case No. 64

UNITED STATES OF AMERICA

v.

RONALD HENRY BLYSTONE, JR.

COMPLAINT FOR VIOLATION OF U.S.C. TITLE 18
SECTION 2 & 661

BEFORE F. ARCHIE MEATYARD, JR.,
Bethesda, Maryland

The undersigned complainant being duly sworn states:

That on or about October 14, 1975, at Bethesda, Maryland in the District of Maryland RONALD HENRY BLYSTONE, JR., did aid and abet JAMES ROBERT DAVIS in the taking and carrying away, with intent to steal, the personal property of FANNIE CLARA KEMP, to wit, a personal checkbook, from the United States National Naval Medical Center, Bethesda, Md., the location of which is within the special maritime and territorial jurisdiction of the United States.

And the complainant states that this complaint is based on (see affidavit attached)

And the complainant further states that he believes that CHESTER E. WELLS, Special Agent, Naval Investigative Service Office, U.S. National Naval Medical Center, Bethesda, Md.; FANNIE CLARA KEMP, 6701 14th Street, N.W., Washington, D.C.; RAYMOND V. HALL, 1815 Franwall Avenue, Wheaton, Md.; RONALD HENRY BLYSTONE, JR., 110 Washington Ave., North

Vandergrift, Pennsylvania are material witnesses in relation to this charge.

/s/ Felice M. Muolto
Signature of Complainant

Special Agent, F.B.I.
Official Title

Sworn to before me, and subscribed in my presence,
Nov. 6, 1975.

/s/ F. Archie Meatyard, Jr.
United States Magistrate

RONALD HENRY BLYSTONE, JR., DISTRICT OF MARYLAND

DEFENDANT

DOCKET NO. 4-75-64M

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (8/74)

In the presence of the attorney for the government
the defendant appeared in person on this dateMONTH DAY YEAR
February 24, 1976

COUNSEL

☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.☒ WITH COUNSEL AFPD Frisch
(Name of counsel)

PLEA

☒ GUILTY, and the court being satisfied that there is a factual basis for the plea, ☐ NOLO CONTENDERE, ☐ NOT GUILTYFINDING &
JUDGMENTThere being a finding/verdict of ☐ NOT GUILTY. Defendant is discharged
☒ GUILTY.Defendant has been convicted as charged of the offense(s) of theft of property under \$100.00 on a Government reservation in violation of Title 18 United States Code, Section 661 & 2 *park*SENTENCE
OR
PROBATION
ORDERThe court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: ~~THE COURT ORDERED THAT THE DEFENDANT BE FINED \$100.00 AND BE PLACED ON PROBATION FOR A PERIOD OF TWO (2) YEARS UNDER THE USUAL CONDITIONS OF PROBATION. THE DEFENDANT SHALL PAY A FINE TO THE UNITED STATES IN THE AMOUNT OF ONE HUNDRED (\$100) DOLLARS. PROBATION IS IMPOSED UNDER TITLE 18 UNITED STATES CODE, SECTION 5010(a).~~

Imposition of sentence as to imprisonment only is suspended and the defendant is placed on probation for a period of Two (2) years under the usual conditions of probation. The defendant shall pay a fine to the United States in the amount of One Hundred (\$100) Dollars. Probation is imposed under Title 18 United States Code, Section 5010(a).

SPECIAL
CONDITIONS
OF
PROBATION

The defendant shall pay fine imposed in installments as directed by his probation officer.

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☐ U.S. District Judge☒ U.S. Magistrate

Paul M. Rosenberg

Date 2/24/76

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Crim. No. 76-0213

U.S.A.

vs.

ANTHONY E. PINNICK

DATE

PROCEEDINGS

1976

Apr. 8 (1) Appeal from Judgment of U.S. Magistrate (Goetz).

Apr. 8 (2) Original Papers of U.S. Magistrate (Goetz).

Apr. 8 —Copies furnished U.S. Attorney.

Apr. 8 —Copy of Rule 81 mailed to Counsel for defendant.

Apr. 14 —Status conference held before Northrop, C.J.

May 11 (3) Copy of Supplemental Memorandum of Appellant.

June 25 (4) Copy of Opinion (Northrop, C.J.) (original filed in crim. no. N-75-0828)

June 28 (5) JUDGMENT: That the Judgment of the United States Magistrate and the sentence thereby imposed in this case is AFFIRMED, Order (Northrop, C.J.) dated June 25, 1976. (copies delivered to counsel 6/28/76 elg)

June 30 (6) Notice of Appeal of Defendant. (C/M 6/30/76).

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Crim. # 76-0213

Magistrate's Docket No. 1-76

Case No. 328M

UNITED STATES OF AMERICA

v.

ANTHONY E. PINNICK
5505 Stonington Ave.
Baltimore, Maryland

COMPLAINT FOR VIOLATION OF U.S.C. TITLE 18
SECTION 661

BEFORE CLARENCE E. GOETZ
BALTIMORE, MARYLAND

The undersigned complainant being duly sworn states:

That on or about December 20, 1975, at Fort Meade, Military Reservation in the District of Maryland, on lands acquired for the use of the United States, and under the jurisdiction thereof, Anthony E. Pinnick did willfully take and carry away with the intent to steal or purloin the personal property of another, to wit: one (1) 10" Ham Slicer, silver in color, made by Robson, one (1) 9" Cooks Knife, silver in color, brown handle, made by Robson, one (1) 8" Bread Knife, silver in color, made by Robson, one (1) 20 piece Stainless Steel Service Set made by Imperial, total value of said items being \$22.50, and said items being the property of the Army and Air Force Exchange Service.

And the complainant states that this complaint is based on the fact that I, Barbara Robinson, having personally observed Anthony E. Pinnick place one (1) Ham Slicer, One (1) Bread Knife, One (1) Utility Knife and one

(1) twenty (20) Piece service set in a brown paper bag. Complainant states that Anthony E. Pinnick then looked around the Main Post Exchange for a short period of time and then departed the Exchange through the Card & Candle Shop and failed to render payment for said items.

And the complainant further states that he believes that are material witnesses in relation to this charge.

/s/ Barbara J. Robinson
Signature of Complainant

Security Agent
Main Post Exchange
Official Title

Sworn to before me, and subscribed in my presence,
January 30, 1976.

/s/ Clarence E. Goetz
United States Magistrate

United States District Court for

DISTRICT OF MARYLAND

DEFENDANT

ANTHONY E. PINNICK
5505 Stonington Avenue
Baltimore, Maryland 21207

DOCKET NO.

1-76-328M

Crim # 76-0213

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 243 (7/73)

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH	DAY	YEAR
4	5	76

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Michael S. Frisch, Esquire

(Name of counsel)

PLEA

☒ GUILTY, and the court being satisfied that there is a factual basis for the plea,☐ NOLO CONTENDERE,☐ NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged☒ GUILTY.

Defendant has been convicted as charged of the offense(s) of larceny of personal property of another on Ft. Meade Military Reservation

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

"The Court finds that the defendant was 18 years of age at the date of conviction, but does not now need confinement, accordingly, IT IS ADJUDGED that the imposition of sentence is suspended and the defendant is placed on probation for a period of 1 year upon the normal conditions of probation and upon the special condition that he will pay a fine to the United States in the sum of \$100.00 in accordance with the directions of the probation officer. T. 18 USC Section 5010(a).

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☐ U.S. District Judge☒ U.S. Magistrate

Date April 5, 1976

② Filed 8 April 1976

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

76-0226

U.S.A.

vs.

JAMES ALBERT RICE, II

DATE

PROCEEDINGS

1976

Apr. 13 (1) Indictment for the violation of U.S.C. TITLE 18, Sections 1708, 1701, and 495. (Possession of stolen mail matter, obstruct and retard the passage of mail, uttering U.S. Treasury check).

Apr. 23 (2) Appearance of Charles G. Bernstein, FPD on behalf of Defendant.

Apr. 23 —Defendant Arraigned and plead "NOT GUILTY" to all Counts, which was accepted by the Court.

Apr. 26 (3) Order (Burgess, U.S. Magis.) appointing Public Defender on behalf of Defendant, dated March 30, 1976.

Apr. 26 (4) Order (Burgess, U.S. Magis.) that Defendant be released on his personal recognizance, as therein set forth, dated March 30, 1976.

May 25 Rearrangement postponed until June 2, 1976—Defendant arrived late.

June 2 (5) Consent of Defendant to be Tried by United States Magistrate.

June 2 —Defendant rearraigned and plead "Guilty" as to Count No. 2 and "Not Guilty" as to each of Counts Nos. 1 and 3, which was accepted by the Court, before Rosenberg, U.S. Magistrate.

DATE PROCEEDINGS
1976

June 2 —"NOLLE PROSEQUI" ENTERED BY UNITED STATES ATTORNEY IN OPEN COURT AS TO COUNTS 1 AND 3, WHICH WAS ACCEPTED BY THE COURT.

June 7 (6) JUDGMENT: That the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of six (6) months. Execution of sentence suspended. The defendant is placed on probation for a period of two (2) years under the usual conditions. Sentence imposed under the Young Adult Offenders Act, 18 USC 4216, extending the Federal Youth Correction Act, 18 USC 5010(a). The defendant shall pay a fine in the amount of \$100.00 in installments as directed by the Probation Officer, Order (Rosenberg, U.S. Magistrate) dated June 2, 1976.

June 7 (7) Appeal from Judgment of the United States Magistrate (Rosenberg). (Rec'd by Magistrate and Clerk June 3, 1976)

June 8 —Copies furnished United States Attorney.

June 8 —Copy of Rule 81 mailed to Michael S. Frisch, AFD

June 25 (8) Copy of Opinion (Northrop, C.J.) (original filed in Crim. No. N-75-0828.

June 28 (9) JUDGMENT: That the Judgment of the United States Magistrate and the sentence thereby imposed in this case is AFFIRMED, Order (Northrop, C.J.) dated June 25, 1976. (copies delivered to counsel 6/28/76 elg)

June 30 (10) Notice of Appeal of Defendant. (C/M 6/30/76).

DFG:JS/76-0502

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Criminal No. W-76-0226-R

UNITED STATES OF AMERICA

vs.

JAMES ALBERT RICE, II

(Possession of Stolen Mail Matter, 18 U.S.C. § 1708; Obstruction of Mail, 18 U.S.C. § 1701; Uttering, 18 U.S.C. § 495)

The Grand Jury for the District of Maryland charges:

On or about the 26th day of March, 1976, in the State and District of Maryland, JAMES ALBERT RICE, II did unlawfully have in his possession a check drawn on the Treasurer of the United States, bearing check number 9,794,647, and symbol number 3051, dated March 12, 1976, in the amount of \$684.12, made payable to George M. Curry, Jr., 1303 Delafield Place, N.W., Washington, D.C. 20011, said check being the contents of a letter addressed to the said George M. Curry, Jr., said letter having been stolen, taken and abstracted from the United States mails, the defendant then knowing the said check and letter to have been stolen, taken and abstracted.

18 U.S.C. § 1708

COUNT II

And the Grand Jury for the District of Maryland further charges:

On or about the 26th day of March, 1976, in the State and District of Maryland, JAMES ALBERT RICE, II did knowingly and willfully obstruct and retard the pas-

sage of the mail in that he did possess a piece of mail, with intent to delay its receipt by the addressee; to wit, a check drawn on the Treasurer of the United States, payable to George M. Curry, Jr., in the amount of \$684.12, which check had been taken from a letter addressed to the said George M. Curry, Jr., 1303 Dellafield Place, N.W., Washington, D.C. 20011.

18 U.S.C. § 1701

COUNT III

And the Grand Jury for the District of Maryland further charges:

On or about the 26th day of March, 1976, in the State and District of Maryland, JAMES ALBERT RICE, II with intent to defraud the United States, did utter and publish as true and genuine, to Grace Ishamel, a paper writing in the form of a check drawn upon the Treasurer of the United States, with a falsely made and forged endorsement on the back thereof, well knowing the endorsement had been falsely forged and made, the said check being of the tenor and description following, to wit:

A check drawn upon the Treasurer of the United States, bearing check number 9,794,647, and symbol number 3051, dated March 12, 1976, in the amount of \$684.12, and made payable to George M. Curry, Jr., 1303 Delafield Place, N.W., Washington, D.C. 20011.

18 U.S.C. § 495

/s/ Jervis S. Finney
JERVIS S. FINNEY
United States Attorney

A TRUE BILL:

/s/ John M. Lazur
Foreman

United States of America vs.

DEFENDANT

JAMES ALBERT RICE II

United States District Court for

DISTRICT OF MARYLAND

DOCKET NO.

76-0226

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH DAY YEAR
June 2 1976

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

FPD Charles Bernstein

(Name of counsel)

PLEA

☒ GUILTY, and the court being satisfied that there is a factual basis for the plea, as to count II

☐ NOLO CONTENDERE,

☐ NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY, as to count II

Defendant has been convicted as charged of the offense(s) of

Obstruction of Mail 18 USC 1701

"Nolle Prosequi" entered by United States Attorney in open court as to counts I and III which was accepted by the court.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of six (6) months. Execution of sentence suspended. The defendant is placed on probation for a period of two (2) years under the usual conditions.

Sentence imposed under the Young Adult Offenders Act 18 USC 4216 extending the Federal Youth Correction Act 18 USC 5010(a)

SPECIAL CONDITIONS OF PROBATION

The defendant shall pay a fine in the amount of \$100.00 in installments as directed by the Probation Officer.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☐ U.S. District Judge

☒ U.S. Magistrate

Paul M. Rosenberg

Date 6/2/76

MicroFilmed 11
Date JUN 17 1976

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

76-0312

U.S.A.

vs.

BYRON D. FLAKES

DATE PROCEEDINGS

1976

May 28 (1) Appeal from Judgment of the United States
Magistrate (Rosenberg). (Rec'd by Magistrate on
5/28/76)

May 28 (2) Original Papers of the United States Magis-
trate (Rosenberg)

June 1 —Copies furnished United States Attorney

June 1 —Copy of Rule 81 mailed to AFD, Michael Frisch.

June 25 (3) Copy of Opinion (Northrop, C.J.) (original
filed in Crim. No. N-75-0828)

June 28 (4) JUDGMENT: That the Judgment of the
United States Magistrate and the sentence thereby im-
posed in this case is AFFIRMED, Order (Northrop,
C.J.) dated June 25, 1976. (copies delivered to counsel
6/28/76 elg)

June 30 (5) Notice of Appeal of Defendant. (C/M 6/30/76).

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Magistrate's Docket No. 8-76

Case No. 1843M

UNITED STATES OF AMERICA

v.

BYRON D. FLAKES

COMPLAINT FOR VIOLATION OF U.S.C. TITLE 18
SECTION 641

Before Paul M. Rosenberg, Baltimore, Maryland

The undersigned complainant being duly sworn states:

That on or about April 7, 1976, at Baltimore, Maryland, in the District of Maryland

BYRON D. FLAKES did steal, without authority, \$7.00 in recorded U. S. Currency, said currency being the money of the U.S. Postal Service.

And the complainant states that this complaint is based on the following: The defendant came to the registry window of the Main Post Office, 900 E. Fayette St., Baltimore, Maryland, to pick up mail addressed to the U.S.S. Plymouth Rock, at 1430 hours this date. Due to previous sneak thefts from the cash drawer at this location, a silent alarm was installed on this drawer. While the postal clerk was preparing mail for the defendant, the silent alarm was activated in the Postal Security Office of the Post Office and the defendant was held in custody by security officers. After first being advised of his rights, the defendant emptied the contents of his pockets for your affiant and the \$7.00 in recorded U.S. Currency was found to be in his possession. Oral admission to the theft was made by the defendant.

And the complainant further states that he believes that Security Officers D. Mahan and W. Chambers and Postal Inspector F. W. Cole are material witnesses in relation to this charge.

/s/ F. G. Widdowson
Signature of Complainant
F. G. WIDDOWSON
Postal Inspector
Official Title

Sworn to before me, and subscribed in my presence,
April 7, 1976.

/s/ Paul M. Rosenberg
United States Magistrate
P. M. ROSENBERG

United States District Court for DISTRICT OF MARYLAND

BYRON D. FLAKES

DEFENDANT

Magistrate's

DOCKET NO. 8-76-1843M

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (8/74)

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH	DAY	YEAR
May	26	1976

COUNSEL

☐ WITHOUT COUNSEL. However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.
☒ WITH COUNSEL AFPD Michael Frisch

(Name of counsel)

PLEA

☒ GUILTY, and the court being satisfied that there is a factual basis for the plea,
 ☐ NOLO CONTENDERE,
 ☐ NOT GUILTY
FINDING &
JUDGMENT
 There being a finding/verdict of
 ☐ NOT GUILTY. Defendant is discharged
☒ GUILTY.

Defendant has been convicted as charged of the offense(s) of

theft of Government money 18 USC 641,
(under \$100.00)SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that:

imposition of sentence suspended as to imprisonment only and the defendant placed on probation for a period of one (1) year on the usual conditions of probation. Said probation is imposed under the Federal Youth Corrections Act 18 USC, 5010(a).

SPECIAL
CONDITIONS
OF
PROBATION

The defendant shall pay a fine in the amount of \$50.00 in installments as directed by the Probation Officer.

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☐ U.S. District Judge☒ U.S. Magistrate

Paul M. Rosenberg

Date 5/26/76

BEST COPY AVAILABLE

27

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

Criminal Action No. N-75-0828

UNITED STATES OF AMERICA

v.

RICKEY LEE DURST

Criminal Action No. N-76-0123

UNITED STATES OF AMERICA

v.

RONALD HENRY BLYSTONE, JR.

Criminal Action No. N-76-0213

UNITED STATES OF AMERICA

v.

ANTHONY E. PINNICK

Criminal Action No. N-76-0226

UNITED STATES OF AMERICA

v.

JAMES ALBERT RICE, II

Criminal Action No. N-76-0312

UNITED STATES OF AMERICA

v.

BYRON D. FLAKES

Filed: June 25, 1976.

Jarvis S. Finney, United States Attorney for the District of Maryland, and Robert A. Rohrbaugh, Robert P. Trout and Daniel F. Goldstein, Assistant United States Attorneys, for the United States of America in all cases.

Charles G. Bernstein, Federal Public Defender for the District of Maryland, and Michael S. Frisch, Assistant Federal Public Defender, for the defendants-appellants in all cases.

Northrop, Chief Judge.

INTRODUCTION

Appellants, Rickey Lee Durst, Ronald Henry Blystone, Jr., Anthony E. Pinnick, James Albert Rice, II, and Byron D. Flakes, appeal sentences imposed by United States Magistrates of this District. Each of the appeals is based upon the same novel issue—whether a fine (and/or restitution) may be imposed where a defendant is sentenced under the provisions of the Federal Youth Corrections Act, 18 U.S.C. §§ 5005 *et seq.* (1970) [hereinafter the Act].

Facts

Rickey Lee Durst, appellant in N-75-0828, was indicted on charges stemming from the possession, forging, and uttering of a stolen United States Treasury check. On February 24, 1976, Durst appeared before United States Magistrate Paul M. Rosenberg, and pled guilty to a superseding information which charged the obstruction of mail, 18 U.S.C. § 1701 (1970). Appellant was sentenced to six months incarceration, but that term was suspended in favor of a three-year period of probation under Section 5010(a) of the Act. Additionally, appellant was ordered to pay a fine of \$100 and restitution of \$160 as a condition of probation.

Ronald Henry Blystone, Jr., appellant in N-76-0123, was arrested and charged with violation of 18 U.S.C. §§ 661, 2 (1970), theft of government property under \$100 from a government reservation (a checkbook from

the United States Naval Medical Center, Bethesda, Md.). Blystone pled guilty to the charges before United States Magistrate Paul M. Rosenberg and was placed on probation for two years in lieu of imprisonment, pursuant to Section 5010(a) of the Act. Magistrate Rosenberg also imposed a fine of \$100 as a condition of probation.

Anthony E. Pinnick, appellant in N-76-0213, was charged with theft of property on a military reservation under \$100 in value, 18 U.S.C. § 661 (1970) (cooking knives, valued at \$22.50). Pinnick pled guilty to that offense and was placed on probation under the provisions of Section 5010(a) for one year and ordered to pay a \$100 fine by United States Magistrate Clarence E. Goetz.

James Albert Rice, II, appellant in N-76-0226, was indicted on charges of possession of stolen mail, 18 U.S.C. § 1708 (1970), obstruction of mail, 18 U.S.C. § 1701 (1970), and uttering, 18 U.S.C. § 495 (1970). The United States Attorney entered a nolle prosequi on counts I and III before Magistrate Rosenberg. Imposition of sentence was suspended and Rice was placed on probation for a period of two years under Section 5010(a), and, as a condition of probation, fined \$100.

Byron D. Flakes, appellant in N-76-0312, was arrested and subsequently pled guilty to the theft of government property under \$100, 18 U.S.C. § 641 (1970) (\$7.00 in United States Currency belonging to the Postal Service). Magistrate Rosenberg accepted Flakes' guilty plea and sentenced him to probation for a period of one year under Section 5010(a) of the Act. Concomitantly, as a condition of probation, Magistrate Rosenberg ordered Flakes to pay a \$50 fine.

From these sentences appellants appeal. Appellants contend that the imposition of a fine in conjunction with a sentence under the Act is impermissible. They base this assertion upon decisions of the United States Courts of Appeals for the Fifth and the Ninth Circuits which hold that a fine is improper where sentencing is pursuant to the Act. *United States v. Bowens*, 514 F.2d 440 (9th Cir. 1975); *United States v. Mollet*, 510 F.2d 625 (9th Cir. 1975); *Cramer v. Wise*, 501 F.2d 959 (5th Cir.

1974); and, *United States v. Hayes*, 474 F.2d 965 (9th Cir. 1973).

Federal Youth Corrections Act

The Federal Youth Corrections Act represents a Congressional awareness that young persons who are convicted of crime have, as a general rule, a higher potential for being rehabilitated to become useful citizens than do older, more mature offenders. Predicated upon this assumption, the Act provides a sentencing alternative of treatment and rehabilitation of youthful offenders under the age of twenty-two at the time of conviction. 18 U.S.C. § 5006(e) (1970).¹ Intended as an alternative to incarceration, the Act is designed to alleviate the often counterproductive punishment accorded rehabilitatable youths. In the words of the House of Representatives committee report recommending passage of the Act:

[R]eliable statistics demonstrate . . . that existing methods of treatment of criminally inclined youths are not solving the problem. A large percentage of those released from our reformatories and penal institutions return to anti-social conduct and ultimately become hardened criminals.

By herding youth with maturity, the novice with the sophisticate, the impressionable with the hardened, and by subjecting youth offenders to the evil influences of older criminals and their teaching of criminal techniques, with the inhibitions that come from normal contacts and counteracting prophylaxis, many of our penal institutions actively spread the infection of crime and foster, rather than check, it.

H.R. Rep. No. 2979, 81st Cong., 2d Sess., 2 U.S. Code Cong. Serv. at 3985 (1950).

The Act provides, in Section 5010, four alternatives which may be pursued by a sentencing court where

¹ The Act is generally applicable to persons between the ages of 18 and 22 years since Section 5006(e) defines a youthful offender as a person under 22 years in age and since persons under 18 are afforded completely different treatment under 18 U.S.C. §§ 5031 et seq. (1970).

deemed appropriate: Section 5010(a) provides for suspension of sentence and probation;² Section 5010(b) & (c) provide for treatment and supervision by the Attorney General;³ and, Section 5010(d) provides for sentence as an adult if the court deems that treatment under the preceding subsections would be of no benefit to the offender.⁴

Although the Act sets forth detailed provisions concerning the various sentencing alternatives, it is silent as to whether or not fines and/or restitution can be properly levied upon a youthful offender in conjunction with the Act. Due to this lack of Congressional specificity, this Court is now called upon to ascertain what Congress intended and what would best effectuate that intent in this regard.

² (a) If the court is of the opinion that the youth offender does not need commitment, it may suspend the imposition or execution of sentence and place the youth offender on probation.

³ (b) If the court shall find that a convicted person is a youth offender, and the offense is punishable by imprisonment under applicable provisions of law other than this subsection, the court may, in lieu of the penalty of imprisonment otherwise provided by law, sentence the youth offender to the custody of the Attorney General for treatment and supervision pursuant to this chapter until discharged by the Division as provided in section 5017(c) of this chapter; or

(c) If the court shall find that the youth offender may not be able to derive maximum benefit from treatment by the Division prior to the expiration of six years from the date of conviction it may, in lieu of the penalty of imprisonment otherwise provided by law, sentence the youth offender to the custody of the Attorney General for treatment and supervision pursuant to this chapter for any further period that may be authorized by law for the offense or offenses of which he stands convicted or until discharged by the Division as provided in section 5017(d) of this chapter.

⁴ (d) If the court shall find that the youth offender will not derive benefit from treatment under subsection (b) or (c), then the court may sentence the youth offender under any other applicable penalty provision.

DISCUSSION

Turning now to the cases cited by the appellants, the first case concerning the imposition of a fine in the context of the Act was *United States v. Hayes*, 474 F.2d 965 (9th Cir. 1973). In *Hayes*, the appellants were convicted of possession of marijuana and sentenced to the custody of the Attorney General under the provisions of Section 5010(b) of the Act, as well as being fined.⁵ The ninth circuit, in its consideration of the sentence, cited *United States v. Waters*, 437 F.2d 722, 726 (D.C. Cir. 1970) to indicate that a combination of retributive and rehabilitative punishment was improper under the Act.⁶ Therefore, it reasoned, that since a fine was retributive in nature, such a sentence was in contravention of Congressional intent. Offering Congressional history of the Act to buttress its opinion, the Court indicated that the Act sought to:

[S]ubstitute for retributive punishment methods of training and treatment designed to correct and prevent anti-social tendencies. It departs from the mere punitive idea of dealing with criminals and looks primarily to the objective idea of rehabilitation. . . .

474 F.2d at 967, citing, H.R. Rep. No. 2979, 81st Cong., 2d Sess., 4 (1950), 2 U.S. Code Cong. Serv. 3983, 3985 (1950). Hence, based upon the premise that a fine is

⁵ At this juncture, it is important to note that although *Hayes* dealt with consideration of a fine under the Act, it is not directly on point with the within cases since it involved the treatment and supervision contained in Section 5010(b), not the probation provision in Section 5010(a) at issue here.

⁶ The District of Columbia Circuit, in *Waters*, did, in a well-reasoned opinion, conclude that there could not be retributive and rehabilitative measures combined when sentencing pursuant to the Act. However, unlike the cases at bar (and also the *Hayes* case), there the court dealt with the combination of a *purely* punitive measure in addition to sentence under the Act—a period of incarceration.

retributive in nature, the court ruled that the combination sentence imposed was illegal.⁷

Following *Hayes*, the United States Court of Appeals for the Fifth Circuit was next to be confronted with the imposition of a fine in addition to a sentence under the Act, in *Cramer v. Wise*, 501 F.2d 959 (1974). There the court, adhering to the reasoning of *Hayes*, concluded that where a youthful offender is sentenced under Section 5010(b), no fine may be additionally imposed. However, the decision in *Cramer* is most noteworthy for the discussion wherein it indicated that Congressional intent could be properly interpreted to permit fines in conjunction with the Act. The court stated:

A fair argument can be made, however, for upholding the power to impose fines in connection with YCA sentences. The language of 18 U.S.C. § 5010 (b) provides that if a youthful offender is convicted of an offense "punishable by imprisonment under applicable provisions of law other than this subsection, the court may, in lieu of penalty of imprisonment, . . . sentence the youth offender to the custody of the Attorney General" (Emphasis added). By its terms the statute does not prohibit imposing monetary fines, but only precludes the im-

⁷ One argument proffered by counsel, and rejected by the court in *Hayes*, deserves mention herein—that there was clear evidence that the Act was intended as a substitute for imprisonment rather than any other penalty (such as a fine). The appellant there proffered the early model of Section 5010(b) of the Act which was prepared by the Judicial Conference of the Committee on Punishment for Crime, in support of this contention. That model stated, *inter alia*, that "in lieu of the penalty otherwise provided by law" (emphasis added), the court may sentence the youth to custody of the Attorney General. However, Congress apparently was not content to allow the sentence imposed under the Act (Section 5010(b)) to be in lieu of all other types of punishment, since in the Act, as enacted, the wording now is that the punishment in Section 5010(b) is "in lieu of the penalty of imprisonment" (emphasis added). Although this important substitution mitigates somewhat persuasively against the interpretation of Congressional intent as perceived by the court in *Hayes*, the ninth circuit nevertheless chose not to accept this reasoning.

position of the penalty of imprisonment when sentencing under the Act.

501 F.2d at 961. After conceding that Congress had altered the language in the final version of the Act to make any sentence imposed pursuant to Section 5010(b) be in lieu of the "penalty of imprisonment" rather than the "penalty provided by law" in the original draft,⁸ the court stated:

It can reasonably be contended, however, that this action by Congress supports a contention that only the power to imprison (and not the power to impose fines) is precluded when sentencing under the Act.

This contention draws support from other parts of the legislative history, for it seems that what Congress most wanted to avoid was the unfortunate effects of commingling youths and hardened criminals.

Id. Nevertheless, the court was not persuaded that the reasoning of *Hayes* was erroneous and held the fine unlawful.

The next case was again a ninth circuit case, *United States v. Mollet*, 510 F.2d 625 (1975). In *Mollet*, the court followed *Hayes* and vacated the sentences of three appellants who had been sentenced under the Act and also fined. However, this case was dissimilar to the foregoing cases in one important aspect—two of the three appellants were sentenced under Section 5010(a). Regardless of the difference, the court almost summarily applied *Hayes* as to all three appellants without even drawing a distinction between Section 5010(a) and (b).⁹

Two months subsequent to the decision on *Mollet*, the ninth circuit was again confronted with this issue in the Section 5010(a) context, *United States v. Bowens*, 514 F.2d 440 (1975). Again, without drawing any distinction between a Section 5010(a) and (b) case, it followed the

⁸ See note 7 *supra*, for discussion on the change of language.

⁹ Judge Blaine Anderson, sitting by designation, filed a noteworthy dissenting opinion in which he criticized the majority decision for its failure to distinguish between Section 5010(a) and (b).

Hayes conclusion that a fine, as a punitive measure, could not be levied in conjunction with a sentence under the Act.

Appellants in the instant case rely heavily on the foregoing cases to support their contention. However, another court, the Northern District of Illinois, recently considered this issue in an extremely persuasive decision, *United States v. Prianos*, 403 F. Supp. 766 (1975). In *Prianos*, Judge Marovitz reviewed the cases set forth above and concluded that a restrictive reading of the Act, such as employed in *Hayes*, is improper when dealing with Section 5010(a) cases. The court reasoned that the levying of a fine upon a youthful offender where sentenced pursuant to Section 5010(a) is, rather than a punitive measure, a sound sentencing alternative in accord with the intention of Congress.

After substantial consideration of the above-mentioned cases, as well as the legislative history of the Act, this Court is of the opinion that a fine and/or restitution is a valid concomitant of sentences under Section 5010(a). Although this decision is diametrically opposed to that reached in *Hayes*, it does not necessarily follow that we totally disagree with *Hayes* and its Section 5010(b) progeny. This Court finds the reasoning of *Hayes* persuasive when considering Section 5010(b) cases, since a fine coupled with a sentence under Section 5010(b) (which mandates extensive treatment and custody by the Attorney General) could arguably be a purely punitive measure inimical to the rehabilitative intention of the Act. See *Waters, supra*. However, although this reasoning may be correct when dealing with Section 5010(b), it would appear to be inapposite when considering Section 5010(a) cases. Section 5010(a), unlike Section 5010(b), does no more than place the youthful offender on probation. The imposition of a fine upon a person who receives only probation, where a much harsher sentence is possible, need not be considered punitive. See *Prianos, supra*. Such a fine could be consistent, as a mere condition of probation, with the rehabilitative intent of the Act. By employing this alternative, the sen-

tencing judge could assure that the youthful offender would not receive the harsh treatment of incarceration, while assuring that the offender accepts responsibility for his transgression. The net result of such treatment would be an increased respect for the law and would, in many cases, stimulate the young person to mature into a good law-abiding citizen.

Moreover, the legislative history intimated that such a sentence is permissible in that it indicated that "the power of the court to grant probation [under Section 5010(a)] is left undisturbed by the [Act]." H.R. Rep. No. 2979, 81st Cong., 2nd Sess., 2 U.S. Code Cong. Serv. 3985 (1950). Since Congress left the power to grant probation "undisturbed," it is reasonable to assume that the sentencing judge's authority under the Act should be co-existent with that which he possesses pursuant to 18 U.S.C. § 3651 *et seq* (Cum. Supp. 1976), the general probation statute. Section 3651 fully authorizes the imposition of a fine, as well as restitution, when granting probation:

While on probation and among the conditions thereof, the defendant—

May be required to pay a fine in one or several sums; and

May be required to make restitution or reparation to aggrieved parties for actual damages or loss caused by the offense for which conviction was had; . . .

Since the imposition of a fine is consistent with the general probation statute, it follows that Congress also intended fines to be consistent with Section 5010(a) of the Act.

Additionally, the preclusion of fines would often cause results that completely contravene the purpose of the Act. If this sentencing alternative were not available, many courts would be confronted with situations where only a sentence under the more stringent adult statutes would be suitable, thus depriving the offender of the benefits of the Act. Even if the sentencing judge chose

to grant probation and a fine under Section 3651, it would clearly inure to the detriment of the youthful offender—he would forever carry the stigma of having been convicted of a felony. Whereas, if imposition of the same sentence was pursuant to the Act, the offender would have, at a later date, the opportunity to have the conviction set aside and his record expunged through the procedure provided therein.¹⁰

Consequently, this Court is of the opinion that the Magistrates did not abuse their sentencing discretion by imposing fines and/or restitution upon these appellants sentenced pursuant to Section 5010(a). It is far better (and probably consistent with the legislative intent) to allow the imposition of such an innovative, but yet rehabilitatively sound sentence, than to narrowly construe the alternate sentence provided by the Act. To hold otherwise would be inimical to the very persons that the Act was designed to protect.

Therefore, in light of the foregoing analysis, IT IS, this 25th day of June, 1976, by the United States District Court for the District of Maryland, ORDERED:

1. That the Judgments and sentences thereby imposed by the United States Magistrates in each of the captioned cases BE, and the same HEREBY ARE, AFFIRMED.

2. That the Clerk of Court shall mail copies of this opinion to the Offices of the Federal Public Defender for the District of Maryland and the United States Attorney for the District of Maryland.

/s/ Edward S. Northrop
EDWARD S. NORTHROP
Chief United States
District Judge

¹⁰ Section 5021 of the Act allows the setting aside of a conviction:

(b) Where a youth offender has been placed on probation by the court, the court may thereafter, in its discretion, unconditionally discharge such youth offender from probation prior to the expiration of the maximum period of probation theretofore fixed by the court, which discharge shall automatically set aside the conviction, and the court shall issue to the youth offender a certificate to that effect.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Criminal Action No. N-75-0828

UNITED STATES OF AMERICA

v.

RICKEY LEE DURST

JUDGMENT

Pursuant to the opinion of this Court dated June 25th, 1976, as to this and four other cases, IT IS ORDERED AND ADJUDGED as follows:

That the Judgment of the United States Magistrate and the sentence thereby imposed in the above-entitled case BE and the same HEREBY IS, AFFIRMED.

Dated at Baltimore, Maryland, this 25th day of June, 1976.

/s/ Edward S. Northrop
EDWARD S. NORTHROP
Chief United States
District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Criminal Action No. N-76-0123

UNITED STATES OF AMERICA

v.

RONALD HENRY BLYSTONE, JR.

JUDGMENT

Pursuant to the opinion of this Court dated June 25th, 1976, as to this and four other cases, IT IS ORDERED AND ADJUDGED as follows:

That the Judgment of the United States Magistrate and the sentence thereby imposed in the above-entitled case BE and the same HEREBY IS, AFFIRMED.

Dated at Baltimore, Maryland, this 25th day of June, 1976.

/s/ Edward S. Northrop
EDWARD S. NORTHROP
Chief United States
District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Criminal Action No. N-76-0213

UNITED STATES OF AMERICA

v.

ANTHONY E. PINNICK

JUDGMENT

Pursuant to the opinion of this Court dated June 25th, 1976, as to this and four other cases, IT IS ORDERED AND ADJUDGED as follows:

That the Judgment of the United States Magistrate and the sentence thereby imposed in the above-entitled case BE and the same HEREBY IS, AFFIRMED.

Dated at Baltimore, Maryland, this 25th day of June, 1976.

/s/ Edward S. Northrop
EDWARD S. NORTHROP
Chief United States
District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Criminal Action No. N-76-0226

UNITED STATES OF AMERICA

v.

JAMES ALBERT RICE, II

JUDGMENT

Pursuant to the opinion of this Court dated June 25th, 1976, as to this and four other cases, IT IS ORDERED AND ADJUDGED as follows:

That the Judgment of the United States Magistrate and the sentence thereby imposed in the above-entitled case BE and the same HEREBY IS, AFFIRMED.

Dated at Baltimore, Maryland, this 25th day of June, 1976.

/s/ Edward S. Northrop
EDWARD S. NORTHROP
Chief United States
District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Criminal Action No. N-76-0312

UNITED STATES OF AMERICA

v.

BYRON D. FLAKES

JUDGMENT

Pursuant to the opinion of this Court dated June 25th, 1976, as to this and four other cases, IT IS ORDERED AND ADJUDGED as follows:

That the Judgment of the United States Magistrate and the sentence thereby imposed in the above-entitled case BE and the same HEREBY IS, AFFIRMED.

Dated at Baltimore, Maryland, this 25th day of June, 1976.

/s/ Edward S. Northrop
EDWARD S. NORTHROP
Chief United States
District Judge

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 76-1905

[Filed Aug. 23, 1976, U. S. Court of Appeals
Fourth Circuit]

UNITED STATES OF AMERICA, APPELLEE

versus

RICKEY LEE DURST,
RONALD HENRY BLYSTONE, JR.,
ANTHONY E. PINNICK,
JAMES ALBERT RICE, II,
BYRON D. FLAKES,
APPELLANTS

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND, AT BALTIMORE

IT IS ORDERED that Charles G. Bernstein and Michael S. Frisch of Baltimore, Maryland, be, and they are hereby assigned as counsel to represent the appellants in the above-styled case.

FOR THE COURT—BY DIRECTION

/s/ William K. Slate, II
Clerk

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 76-1905

UNITED STATES OF AMERICA, APPELLEE

—v—

RICKEY LEE DURST
RONALD HENRY BLYSTONE, JR.
ANTHONY E. PINNICK
JAMES ALBERT RICE, II
BYRON D. FLAKES,
APPELLANTS

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND, AT BALTIMORE
EDWARD S. NORTHROP, *Chief Judge*

Submitted November 18, 1976 Decided December 9, 1976

Before BUTZNER, Circuit Judge, FIELD, Senior Circuit Judge, and WIDENER, Circuit Judge.

Robert Trout, AUSA for appellee; Charles G. Bernstein and Michael S. Frisch (court assigned) for appellants.

PER CURIAM:

In these consolidated cases, several youth offenders appeal judgments of the district court on the ground that a fine or restitution may not be imposed on a person sentenced pursuant to the Federal Youth Corrections Act, 18 U.S.C. § 5010(a). While the appeal was pending, we decided, in *United States v. Oliver*, No. 75-2161 (4th Cir. October 5, 1976), that the imposition of a fine as a condition of probation is consistent with the Act. For the reasons expressed in *Oliver*, we believe that a requirement of restitution is also consistent. The judgment of the district court is summarily affirmed.

SUPREME COURT OF THE UNITED STATES

No. 76-5935

RICKEY LEE DURST, ET AL., PETITIONERS

v.

UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

ON CONSIDERATION of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

March 21, 1977